

FIRST REGULAR SESSION

# SENATE BILL NO. 198

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CROWELL.

Read 1st time January 27, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

0270S.011

## AN ACT

To repeal sections 145.009, 145.011, 145.041, 145.051, 145.091, 145.101, 145.102, 145.201, 145.301, 145.481, 145.511, 145.551, 145.552, 145.601, 145.711, 145.801, 145.846, 145.871, 145.961, 145.971, 145.985, 145.995, and 145.1000, RSMo, relating to the repeal of the estate tax.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 145.009, 145.011, 145.041, 145.051, 145.091, 145.101, 145.102, 145.201, 145.301, 145.481, 145.511, 145.551, 145.552, 145.601, 145.711, 145.801, 145.846, 145.871, 145.961, 145.971, 145.985, 145.995, and 145.1000, RSMo, are repealed, to read as follows:

[145.009. Sections 145.011 to 145.995 shall become effective January 1, 1981, but it shall apply only with respect to decedents dying on or after January 1, 1981. The repeal of the provisions of chapter 145 shall become effective January 1, 1981, but it shall not affect any decedents dying before January 1, 1981, in any respect, including, but not limited to, the determination of tax, interest, penalties, procedures, and periods of limitations.]

[145.011. A tax is imposed on the transfer of every decedent's estate which consists in whole or in part of property having a tax situs within the state of Missouri. The Missouri estate tax shall be the maximum credit for state death taxes allowed by Internal Revenue Code Section 2011 but not less than the maximum credit for state death taxes allowable to the estate of a decedent against the federal estate tax by Section 2011 or any other provision of the laws of the United States.]

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

2 [145.041. If the decedent's estate contains property having  
3 a tax situs not within the state of Missouri, then the tax  
4 determined by section 145.011 shall be reduced to an amount  
5 determined by multiplying the tax by a fraction whose numerator  
6 is the gross estate excluding all property having a tax situs not  
7 within the state of Missouri at the decedent's death and whose  
8 denominator is the gross estate. In determining the fraction, no  
9 deductions shall be considered and the gross estate shall not be  
10 reduced by a mortgage or other indebtedness for which the  
decedent's estate is not liable.]

2 [145.051. The liability imposed by sections 145.011 to  
3 145.995 shall be paid by the executor.]

2 [145.091. Any term used in sections 145.011 to 145.995  
3 shall have the same meaning as when used in a comparable context  
4 in the laws of the United States, unless a different meaning is  
5 clearly required by the provisions of sections 145.011 to 145.995.  
6 Any reference in sections 145.011 to 145.995 to the Internal  
7 Revenue Code or other laws of the United States shall mean the  
8 Internal Revenue Code of 1954, and amendments thereto, and  
9 other provisions of the laws of the United States, as they may be  
or become effective, at any time or from time to time.]

2 [145.101. 1. "Executor" means the executor or  
3 administrator of the decedent, or, if there is no executor or  
4 administrator, then any person in actual or constructive possession  
5 of any property of the decedent.

6 2. "Nonresident" means an individual who is not a resident.

7 3. "Resident" means an individual who is domiciled in this  
8 state at the time of death.

9 4. "State" means any state or territory of the United States  
and the District of Columbia.]

2 [145.102. Property shall have a tax situs within the state  
3 of Missouri if:

4 (1) It is real estate or tangible personal property and has  
5 actual situs within the state of Missouri; or

6 (2) It is intangible personal property and the decedent was  
a resident.]

2           [145.201. When the director of revenue claims that a  
3           decedent was domiciled in this state at the time of his death and  
4           the taxing authorities of another state or states make a like claim  
5           on behalf of their state or states, the director may make a written  
6           agreement of compromise with the other taxing authorities and the  
7           executor that a certain sum shall be accepted in full satisfaction of  
8           any and all death taxes imposed by this state, including any  
9           interest or penalties to the date of filing the agreement. The  
10          agreement shall also fix the amount to be accepted by the other  
11          states in full satisfaction of death taxes. The executor is hereby  
12          authorized to make such agreement. The director shall assess the  
13          agreed tax and the tax shall be deemed conclusively fixed as  
14          therein provided. Unless the tax is paid within ninety days after  
15          filing the agreement, interest shall accrue upon the amount fixed  
          in the agreement from the time of the decedent's death.]

2           [145.301. If an executor or other fiduciary receives a  
3           discharge pursuant to Internal Revenue Code Section 2204 (a) or  
4           (b) and if the fiduciary makes written application to the director of  
5           revenue for determination of the amount of the tax and discharge  
6           from personal liability, the director within two months after  
7           receiving satisfactory evidence of the Section 2204 discharge, but  
8           not after the expiration of the period prescribed for the assessment  
9           of the tax in section 145.711, shall notify the fiduciary of the  
10          amount of the tax. The fiduciary, on payment of the amount of  
11          which he is notified (other than any amount the time payment of  
12          which is extended under section 145.551), and on furnishing any  
13          bond which may be required for any amount for which the time for  
14          payment is extended, shall be discharged from personal liability for  
15          any deficiency in tax thereafter found to be due and shall be  
          entitled to a receipt or writing showing the discharge.]

2           [145.481. A tax return with respect to the tax imposed by  
3           sections 145.011 to 145.995 shall be made:

4           (1) With respect to a resident, by every executor who is  
5           required to file a federal estate tax return;

6           (2) With respect to a nonresident, by every executor who is  
          required to file a federal estate tax return if that part of the gross

7 estate having a tax situs within the state of Missouri exceeds ten  
8 thousand dollars.]

[145.511. Returns required by section 145.481 shall be filed  
2 within nine months after the death of the decedent. A person  
3 required to make and file a return under sections 145.011 to  
4 145.995 shall without assessment, notice, or demand, pay any tax  
5 due thereon to the director of revenue on or before the date fixed  
6 for filing such return (determined without regard to any extension  
7 of time for filing the return). The director shall prescribe the place  
8 for filing any return, declaration, statement, or other document  
9 required pursuant to this chapter and for the payment of any tax.]

[145.551. 1. The director of revenue may grant a  
2 reasonable extension of time for payment of tax, or for filing any  
3 return, declaration, statement, or other document required by  
4 sections 145.011 to 145.995 on such terms and conditions as he  
5 may require. No extension for filing any return, declaration,  
6 statement or document shall exceed six months.

7 2. If a taxpayer has been granted an extension of time for  
8 filing the federal estate tax return, the filing of a copy of the  
9 extension with the director of revenue shall automatically extend  
10 the due date of the tax return required by sections 145.011 to  
11 145.995.

12 3. If a taxpayer has been granted an extension of time for  
13 paying any portion of the federal estate tax, the filing of a copy of  
14 the extension with the director of revenue shall automatically  
15 extend the time for the payment of the tax or a portion of the tax  
16 required by sections 145.011 to 145.995 to the applicable  
17 limitations specified in Internal Revenue Code Section 2011(c) or  
18 2015. The portion of the Missouri estate tax which is subject to  
19 deferral or payable in installments shall be determined by  
20 multiplying the total Missouri estate tax payable by a fraction, the  
21 numerator of which is the gross value of those assets of the  
22 decedent's estate having a taxable situs in Missouri which qualify  
23 for deferred or installment payment under Internal Revenue Code  
24 Section 6161, 6163, or 6166, and the denominator of which is the  
25 gross value of all assets of the decedent's estate having a taxable

26 situs in Missouri. For purposes of this section, the value of  
27 property shall be that determined for federal estate tax purposes.  
28 Deferred payments and installment payments with interest shall  
29 be paid at the same time and in the same manner as payments of  
30 the federal estate tax are required to be made under the applicable  
31 sections of the Internal Revenue Code. Acceleration of payments  
32 under this section shall occur under the same circumstances and  
33 in the same manner as provided in Internal Revenue Code Section  
34 6166(g). During such extension, interest shall accrue and become  
35 due annually on the Missouri estate tax at the same rate as  
36 provided in Section 6601 of Title 26, United States Code for the  
37 extension of federal estate taxes during the same period.

38 If more than one rate is applicable to amounts owed by a taxpayer  
39 under the federal estate tax during such period of extension, the  
40 same rates shall apply to the Missouri estate tax, and in the same  
41 proportion in which such rates are applicable to the amount owed  
42 under the federal estate tax attributable to assets having a taxable  
43 situs in Missouri. After the period of extension for the payment of  
44 Missouri estate taxes has expired, interest shall accrue as provided  
45 in section 143.731.]

[145.552. Unless the decedent otherwise directs by will, if  
2 any part of the decedent's gross estate for federal estate tax  
3 purposes consists of property the value of which is includable in  
4 the gross estate by reason of Internal Revenue Code section 2044,  
5 the decedent's estate shall be entitled to recover from the person  
6 receiving the property the amount by which the total Missouri  
7 estate tax paid exceeds the total Missouri estate tax which would  
8 have been payable if the value of such property had not been  
9 included in the gross estate. For purposes of this section, if there  
10 is more than one person receiving the property, the right of  
11 recovery shall be against each such person, based on his pro rata  
12 share of the property received. Further, for purposes of this  
13 section, interest and penalties attributable to additional Missouri  
14 estate tax on property described in this section shall be treated as  
15 additional Missouri estate tax which the decedent's estate shall be  
16 entitled to recover in accordance with the provisions of this

17 section.]

18 [145.601. If the amount of a taxpayer's federal taxable  
19 estate, adjusted taxable gifts, or credit for state death taxes  
20 reported on his federal estate tax return is changed or corrected by  
21 the United States Internal Revenue Service or other competent  
22 authority, the taxpayer shall report the change or correction within  
23 ninety days after the final determination of the change or  
24 correction or as otherwise required by the director of revenue. Each  
25 report shall state whether and wherein the determination is  
26 believed to be erroneous. Any taxpayer filing an amended federal  
27 estate tax return shall also file within ninety days thereafter an  
28 amended return under sections 145.011 to 145.995 and shall give  
29 such information as the director of revenue may require. The  
30 imposition of an additional tax by Internal Revenue Code Section  
31 2032A shall constitute a change. The director of revenue may by  
32 regulation prescribe exceptions to the requirements of this section  
33 as he deems appropriate.]

34 [145.711. 1. Except as otherwise provided in this section,  
35 a notice of deficiency shall be mailed to the taxpayer within three  
36 years after the return was filed. No deficiency shall be assessed or  
37 collected unless the notice is mailed within the three-year period  
38 or the period otherwise fixed.

39 2. If no return is filed or a false and fraudulent return is  
40 filed with intent to evade the tax imposed by sections 145.011 to  
41 145.995, a notice of deficiency may be mailed to the taxpayer at any  
42 time.

43 3. If a taxpayer fails to comply with the requirements of  
44 section 145.601 by not reporting a change or correction or by not  
45 filing an amended return, a notice of deficiency may be mailed to  
46 the taxpayer within one year after the director of revenue shall  
47 become aware of the determination. A notice under this subsection  
48 shall be limited to the effects on the Missouri estate tax of the  
49 issues on which the federal determination is based.

50 4. If the taxpayer shall, pursuant to section 145.601, report  
51 a change or correction or file an amended return or report a change  
52 or correction which is treated in the same manner as if it were a

20 deficiency for federal estate tax purposes, the assessment (if not  
21 deemed to have been made upon the filing of the report or amended  
22 return) may be made at any time within one year after the report  
23 or amended return was filed. A notice under this subsection shall  
24 be limited in the manner provided in subsection 3 of this section.

25 5. Where, before the expiration of the time prescribed in  
26 this section for the assessment of a deficiency, both the director of  
27 revenue and the taxpayer shall have consented in writing to its  
28 assessment after such time, the deficiency may be assessed at any  
29 time prior to the expiration of period agreed upon. The period so  
30 agreed may be extended by subsequent agreement in writing made  
31 before the expiration of the period previously agreed upon.

32 6. For purposes of this section a return filed before the last  
33 day prescribed by law or by regulation promulgated pursuant to  
34 law for the filing thereof shall be deemed to be filed on such last  
35 day.]

[145.801. 1. A claim for credit or refund of an overpayment  
2 of any tax imposed by sections 145.011 to 145.995 shall be filed by  
3 the taxpayer within three years from the time the return was filed  
4 or two years from the time the tax was paid, whichever of the  
5 periods expires the later; or if no return was filed by the taxpayer,  
6 within two years from the time the tax was paid. No credit or  
7 refund shall be allowed or made after the expiration of the period  
8 of limitation prescribed in this subsection for the filing of a claim  
9 for credit or refund, unless a claim for credit or refund is filed by  
10 the taxpayer within the period.

11 2. If the claim is filed by the taxpayer during the three-year  
12 period prescribed in subsection 1, the amount of the credit or  
13 refund shall not exceed the portion of the tax paid within the three  
14 years immediately preceding the filing of the claim plus the period  
15 of any extension of time for filing the return. If the claim is not  
16 filed within the three-year period, but is filed within the two-year  
17 period, the amount of the credit or refund shall not exceed the  
18 portion of the tax paid during the two years immediately preceding  
19 the filing of the claim. If no claim is filed, the credit or refund  
20 shall not exceed the amount which would be allowable under either

21 of the preceding sentences, as the case may be, if a claim was filed  
22 on the date the credit or refund is allowed.

23 3. If pursuant to subsection 5 of section 145.711 an  
24 agreement for an extension of the period for assessment is made  
25 within the period prescribed in subsection 1 of this section for the  
26 filing of a claim for credit or refund, the period for filing a claim for  
27 credit or for making a credit or refund if no claim is filed, shall not  
28 expire prior to six months after the expiration of the period within  
29 which an assessment may be made pursuant to the agreement or  
30 any extension. The amount of the credit or refund shall not exceed  
31 the portion of the tax paid after the execution of the agreement and  
32 before the filing of the claim or the making of the credit or refund,  
33 as the case may be, plus the portion of the tax paid within the  
34 period which would be applicable under subsection 1 of this section  
35 if a claim had been filed on the date the agreement was executed.

36 4. If a taxpayer is required by section 145.601 to report a  
37 change or correction which is treated in the same manner as if it  
38 were an overpayment for federal estate tax purposes, an amended  
39 return or a claim for credit or refund of any resulting overpayment  
40 of tax shall be filed by the taxpayer within one year from the time  
41 the notice of such change or correction or such amended return was  
42 required to be filed with the director of revenue. If the report or  
43 amended return required by section 145.601 is not filed within the  
44 ninety-day period therein specified, interest on any resulting  
45 refund or credit shall cease to accrue after the ninetieth day. The  
46 amount of such credit or refund shall not exceed the amount of the  
47 reduction in Missouri estate tax attributable to the effect of the  
48 issues on which the federal change or correction or the items  
49 amended on the taxpayer's amended federal estate tax return are  
50 based.]

[145.846. An application for review of the director of  
2 revenue's determination pursuant to sections 145.011 to 145.995  
3 shall be filed by the executor with the administrative hearing  
4 commission under section 621.050.]

[145.871. The courts of this state shall recognize and  
2 enforce liabilities for estate and transfer taxes lawfully imposed by

3 any state which extends a like comity to this state, and the duly  
4 authorized officer of any such state may sue for the collection of  
5 such a tax in the courts of this state. A certificate by the secretary  
6 of state of the other state that an officer suing for the collection of  
7 the tax is duly authorized to collect the tax shall be conclusive  
8 proof of such authority. For the purposes of this section, the word  
9 "TAXES" shall include additions to tax, interest, and penalties, and  
10 liabilities for the taxes, additions to tax, interest, and penalties  
11 shall be recognized and enforced by the courts of this state to the  
12 same extent that the laws of the other state permit the  
13 enforcement in its courts of liability for the taxes, additions to a  
14 tax, interest, and penalties due this state under sections 145.011  
15 to 145.995.]

[145.961. 1. The director of revenue shall administer and  
2 enforce the tax imposed by sections 145.011 to 145.995 and he is  
3 authorized to make such rules and regulations and to require such  
4 facts and information to be reported as he may deem necessary to  
5 enforce the provisions of sections 145.011 to 145.995.

6 2. The rules and regulations prescribed by the director of  
7 revenue shall follow as nearly as practicable the rules and  
8 regulations of the Secretary of the Treasury of the United States.  
9 This construction of sections 145.011 to 145.995 will further its  
10 purposes to simplify the preparation of tax returns, aid in its  
11 interpretation through use of federal precedents, and improve its  
12 enforcement.]

[145.971. 1. The director of revenue may prescribe the form  
2 and contents of any return or other documents, including a copy of  
3 part or all of a federal return, required to be filed under the  
4 provisions of sections 145.011 to 145.995.

5 2. The director of revenue for the purpose of ascertaining  
6 the corrections of any return, or for the purpose of making an  
7 estimate of any person, shall have power to examine or to cause to  
8 have examined, by any agent or representative designated by him  
9 for that purpose, any books, papers, records, or memoranda bearing  
10 upon the matters required to be included in the return, and may  
11 require the attendance of the person rendering the return or any

12 officer or employee of such person, or the attendance of any other  
13 person having knowledge in the premises, and may take testimony  
14 and require proof material for his information, with power to  
15 administer oaths to such person or persons.

16 3. Reports and returns required to be filed under sections  
17 145.011 to 145.995 shall be preserved for four years and thereafter  
18 until the director of revenue orders them destroyed.]

[145.985. Except as otherwise specifically provided in  
2 sections 145.011 to 145.995, procedural matters under the  
3 provisions of sections 145.011 to 145.995 shall be determined  
4 pursuant to and in the manner prescribed in the following sections  
5 of the revised statutes of Missouri, the state income tax law,  
6 governing similar procedures thereunder: sections 143.561,  
7 143.571, 143.611, 143.621, 143.631, 143.641, 143.651, 143.661,  
8 143.671, 143.681, 143.691, 143.701, 143.721, 143.731, 143.741,  
9 143.751, 143.771, 143.781, 143.791, 143.811, 143.821, 143.831,  
10 143.841, 143.851, 143.861, 143.881, 143.891, 143.901, and 143.986.]

[145.995. 1. A generation-skipping credit tax is imposed on  
2 every generation-skipping transfer which consists in whole or in  
3 part of property having a tax situs within the state of Missouri.  
4 The Missouri generation-skipping credit tax shall be the maximum  
5 credit for state death taxes allowed by Internal Revenue Code,  
6 section 2604.

7 2. The other sections of sections 145.011 to 145.995 shall be  
8 applied by substituting:

9 (1) "Missouri generation-skipping credit tax" for "Missouri  
10 estate tax";

11 (2) "Tax imposed by section 145.995" for "tax imposed by  
12 section 145.011";

13 (3) "Property included in the generation-skipping transfer"  
14 for "gross estate";

15 (4) "Generation-skipping tax credit" for "credit for state  
16 death taxes"; and

17 (5) "Federal generation-skipping tax return" for "federal  
18 estate tax return".]

[145.1000. Other provisions of this chapter to the contrary

2           notwithstanding, if the federal estate tax imposed pursuant to  
3           Section 2011 of the Internal Revenue Code, as amended, is  
4           repealed, then no tax shall be imposed on the transfer of a  
5           decedent's estate in Missouri. The provisions of this section shall  
6           become effective on the same date as the effective date of the repeal  
7           of the federal estate tax.]

✓

Unofficial

Bill

Copy